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IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

No. 574

PANHANDLE EASTERN PIPE LINE COMPANY, *Petitioner,*

v.

FEDERAL POWER COMMISSION, MICHIGAN PUBLIC SERVICE COMMISSION, COUNTY OF WAYNE, MICHIGAN, *Respondents.*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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September 15, 1965

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

Panhandle Eastern Pipe Line Company (Panhandle), Petitioner herein, respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the District of Columbia Circuit entered in the above entitled cause on June 22, 1965.

OPINIONS BELOW

The opinion of the Court of Appeals, dated June 22, 1965 (App. *infra,* p. 1a) is not yet reported. Opinions 269-B and 344-A of the Federal Power Commission (R. 150-171) are reported at 32 F.P.C. 634, and 32 F.P.C. 636, respectively; its order on rehearing (R. 182-8) is not yet reported.[1]

JURISDICTION

The judgment of the Court of Appeals was entered on June 22, 1965 (App. *infra,* p. 2a). The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

QUESTION PRESENTED

Whether a regulatory agency denies the fair and adequate hearing required by due process when, having raised alleged deficiencies in a company's proposal for the first time after the close of the administrative proceeding, the agency rejects the company's petition for leave to present additional evidence and be heard concerning such newly injected considerations and, nevertheless, uses the absence of such evidence as the basis for resolving a pending issue adversely to the company.

STATEMENT

Panhandle, a Delaware corporation, produces and purchases natural gas in the States of Texas, Oklahoma and Kansas, and owns and operates a natural gas pipeline system extending from Texas through

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[1] The prior opinions of the Court of Appeals in these proceedings are reported, *sub nom City of Detroit* v. *F.P.C.*, 230 F. 2d 810 (1955), *cert. denied,* 352 U.S. 829 (1956), and *Panhandle Eastern Pipe Line Co.* v. *F.P.C.*, 305 F. 2d 763 (1962), *cert. denied,* 372 U.S. 916 (1963). The Commission's prior opinions (Nos. 269, 269-A and 344) are reported at 13 F.P.C. 53, and 25 F.P.C. 784, 1214, 787 and 1215 respectively.

Oklahoma, Kansas, Missouri, Illinois, Indiana and Ohio to its northern termini in Michigan. The rates charged by Panhandle for the sale of natural gas for resale in interstate commerce are subject to regulation by the Federal Power Commission under the Natural Gas Act.

Panhandle's Hydrocarbon Operations

In addition to its jurisdictional activities of transporting and selling natural gas, Panhandle extracts from its gas stream, separates, processes, refines and sells, natural gasoline and other hydrocarbons. Part of these operations are conducted at Panhandle's extraction plant near Liberal, Kansas (R. 157). The remainder of such operations involved in this proceeding is conducted under a contract with Phillips Petroleum Company[2] under which Phillips extracts at its extraction plant at Sneed, Texas, natural gasoline and other hydrocarbons from Panhandle's gas stream, separates, processes, refines and sells the same and pays Panhandle a part of the total sales proceeds (R. 156-7).

All of Panhandle's profits from both of these operations were used by the Commission to reduce Panhandle's pipeline cost of service, thereby decreasing its gas revenues and rates. The result, of course, is that Panhandle and its stockholders who furnished the requisite capital were deprived of the net income from those separate hydrocarbon operations which are unrelated to Panhandle's jurisdictional activities.[3]

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[2] There is no affiliation between Phillips and Panhandle.

[3] During the test year in Docket G-2506, Panhandle received total revenues of $1,007,993 and incurred total operating costs of $587,114 with respect to the Liberal plant and realized $517,578 (gross plant revenues of $1,053,935 less allocated costs of $536,357) from the sale of hydrocarbons at Sneed (R. 80-81, 84, 157).

G-1116 Proceedings

In 1951, Panhandle filed with the Commission in Docket G-1116 new rates which became effective on February 20, 1952, subject to refund, as provided in Section 4(e) of the Act, 15 U.S.C. § 717c(e) (R. 124-5). Following hearings, the Commission, on April 15, 1954, issued its Opinion 269 (R. 122 *et seq.;* 13 F.P.C. 53), in which it concluded, *inter alia,*[4] that Panhandle's hydrocarbon operations at Liberal and Sneed constituted separate businesses and that neither the costs nor the revenues thereof should be credited against Panhandle's cost of service, i.e., reflected in the rates fixed for Panhandle's jurisdictional activities (R. 125-7; 13 F.P.C. at 77-8). The Commission, accordingly, undertook to make the requisite allocation of joint costs between extraction operations and regulated activities by a so-called Btu method (R. 128; 13 F.P.C. at 79).[5]

Upon review (*City of Detroit* v. *F.P.C.,* 230 F. 2d 810 (D.C. Cir., 1955), *cert. denied* 352 U.S. 829 (1956)),[6] the Court of Appeals, holding to be "unacceptable" the ground for the Commission decision, i.e. "the fluctuating and unregulated prices of natural gasoline and other liquid hydrocarbons" (230 F. 2d at pp. 820-1), set aside the Commission's order and re-

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[4] All the other issues initially involved in these proceedings have now been resolved.

[5] The Btu method reflects "the reduction in the volume of raw gas equal to the loss in heating value (Btu) due to the extraction of the liquid hydrocarbons plus the fuel used in the process" (R. 128; 13 F.P.C. at 79).

[6] Hereinafter referred to as the *City of Detroit* case.

manded the case "for further proceedings not inconsistent with this opinion" (*Id.* at p. 823).[7]

G-2506 Proceedings

In the meantime, in 1954, Panhandle filed with the Commission in Docket G-2506 new rates which, after suspension, became effective subject to refund (R. 109-10). The allocation method proposed by the Commission's Staff in this proceeding with regard to Liberal and Sneed,[8] was the same Btu method used by the Commission in Opinion 269 and virtually identical to that proposed in Panhandle's initial presentation. Compare R. 58, 68 with R. 69-72. In addition, after the decision in *City of Detroit,* Panhandle submitted uncontradicted evidence establishing that the extraction of light hydrocarbons, such as butanes and propanes,[9] had no effect whatever on the operation of Pan-

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[7] On the remand, the Commission, upon Panhandle's motion (see R. 51-2), provided in an order entered December 6, 1956, that (R. 57):

> "• • • the proceedings in Docket Nos. G-1116, *et al.*, should be reopened for the purpose of permitting the parties opportunity to present further evidence therein relevant and material to the issues and questions raised by the opinion of the court, and we shall hereafter so provide by further order."

Despite this assurance, the Commission did not reopen this proceeding to permit the introduction of further evidence.

[8] Since the hearings in Docket G-2506 were begun before the Court of Appeals handed down its decision in *City of Detroit,* this evidence was presented on the assumption that Panhandle's costs for the extraction operations were to be omitted from the pipeline cost of service.

[9] The gas stream as it comes out of the well typically contains various hydrocarbons such as methane (CH_4), ethane (C_2H_6), propane (C_3H_8), butane (C_4H_{10}), pentane (C_5H_{12}), etc. The weight of these hydrocarbons increases with the number of carbon (C) atoms. Natural gasoline consists predominantly of pentanes and heavier hydrocarbons.

handle's pipeline system (R. 13, 22, 24) and that the extraction of only 2.11 percent of the heavier hydrocarbons such as natural gasoline actually extracted at Sneed and of only 9.47 percent of the natural gasoline actually extracted at Liberal was helpful to improve the efficiency of Panhandle's pipeline operations (R. 13, 20, 23, 24).

Since all but a very small percentage of the total extraction (of both light and heavier hydrocarbons) at Liberal and Sneed as well as all of the separating, processing and refining operations at these plants were thus wholly superfluous to Panhandle's natural gas pipeline business, Panhandle claimed that the costs and revenues attributable to superfluous extraction should be treated separately and differently from those attributable to beneficial or incidental extraction. In so urging, Panhandle accepted the proposition that costs and revenues attributable to the *beneficial* or incidental extraction should be credited against the pipeline cost of service. However, it contended that there should be no such crediting with regard to the superfluous extraction, and that instead the costs of such extraction, including full compensation for loss of Btu value or other factors resulting therefrom, should, by appropriate allocation, be determined separately and excluded from the jurisdictional cost of service (R. 111; 25 F.P.C. at 789), thereby giving full credit in the natural gas rates for all costs applicable to such extraction.

In its Opinion 344, in which only three Commissioners joined (R. 109, 111-113; 25 F.P.C. 787, 797-8),[10]

[10] The Commission simultaneously issued Opinion 269-A in Docket G-1116, in which it undertook to apply the reasoning of Opinion 344 to the G-1116 proceeding (R. 133-8).

the Commission rejected Panhandle's position. Instead, the Commission held, on the basis of an alleged general rule purportedly set out in *City of Detroit,* that *all* of Panhandle's hydrocarbon profits must be used to reduce its pipeline cost of service (R. 111-2; 25 F.P.C. at 798).[11]

Upon review (*Panhandle Eastern Pipe Line Co.* v. *F.P.C.,* 305 F. 2d 763 (D.C. Cir., 1962), *cert. denied,* 372 U.S. 916 (1963)),[12] the Court of Appeals ruled that the Commission had erred in reading *City of Detroit* as requiring such crediting of all the hydrocarbon revenues where only a part of the extraction operations improved the efficiency of the pipeline system (305 F. 2d at 768). The Court, accordingly, remanded the case to the Commission "to reach an independent determination, in light of our opinion in the *City of Detroit* case, as to whether there should be an allocation of the extraction plant profits at Liberal and Sneed" (*Ibid.*).

Proceedings Subsequent to the Panhandle Remand

Since the Commission's brief filed with the Court of Appeals in the *Panhandle* case had for the first time claimed that Panhandle's evidence as to its proposed

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[11] On rehearing, one of the three participating Commissioners disagreed with the Commission's treatment of the Liberal and Sneed hydrocarbon revenues (R. 121, 140-1):

> "I had misgivings concerning the treatment of this issue at the time the opinion was rendered, but felt that the decision in the City of Detroit case did not permit any other result. On further consideration, I am so thoroughly convinced that the result we have reached is wrong that I would modify the opinion in this respect."

[12] Hereinafter referred to as the *Panhandle* case.

method of allocating costs between beneficial and superfluous extraction was deficient on certain allegedly critical aspects, Panhandle, on April 19, 1963—following the remand in the *Panhandle* case—filed with the Commission a "Petition for Opportunity to Present Evidence as to Extraction Issue Remanded by Court of Appeals" (R. 141-9), in which it requested the opportunity to present evidence with regard to these alleged deficiencies.[18]

Sixteen months passed, however, without any action by the Commission. Then, without reopening the record or receiving further evidence or briefs, the Commission on August 20, 1964, issued its Opinions 344-A and 269-B here involved in which it again ruled that all of Panhandle's revenues from the hydrocarbon operations at Liberal and Sneed should be credited against its pipeline cost of service. This time the Commission based its ruling on a finding that:

> "* * * Panhandle has failed to provide a method which would fairly allocate the extraction costs and revenues between pipeline and 'superfluous' extraction operations, and that the record does not provide any other basis for making any such allocation, or even for determining that such other allocation would have been appropriate. * * *" (R. 163).

In so finding, the Commission relied for the most part upon the alleged deficiencies in Panhandle's evidence which had been raised for the first time in the Commission's brief before the Court below in *Panhandle*—the very matters concerning which Panhandle had sought

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[18] Also, Panhandle offered to submit further evidence regarding the Liberal and Sneed extraction operations "to assist the Commission to arrive at a proper solution to this vexing problem" (R. 148).

and had been denied an opportunity to be heard. Thus, according to the Commission, Panhandle's proposed allocation method was deficient because, *inter alia,* it did not take into account "the cost to its jurisdictional rate payers of the loss of cheap expansibility of downstream pipeline facilities resulting from the utilization of such facilities for transporting gas for any 'non-jurisdictional' extraction at the two plants and for the loss in Btu or heating value of the gas stream as a result of the extraction operations." (R. 165).

In addition to pointing to the errors inherent in the Commission's decision, Panhandle's application for rehearing expressly requested again that Panhandle be allowed to submit evidence with regard to the considerations newly injected by the Commission, and specifically enumerated the areas in which it would submit such evidence (R. 171-81). However, on October 15, 1964, the Commission denied rehearing (R. 182-9).

Upon Panhandle's petition for review, the Court below affirmed (App., *infra,* p. 1a).

REASONS FOR GRANTING THE WRIT

In affirming the Commission's decision based upon newly-injected considerations as to which Panhandle had explicitly been denied an opportunity to present evidence or be heard, the Court below had decided an important question relating to due process of law in a manner which is contrary to other Court of Appeals decisions. Moreover, if not reversed, the decision below will provide strong impetus to the growing and totally unwarranted tendency—apparent from the several recent decisions cited *infra,* p. 10—among various of the regulatory agencies to flout the due process rights of parties in proceedings before them

under the guise of cleaning up their dockets and achieving expedition. Since "[t]he maintenance of proper standards on the part of administrative agencies in the performance of their quasijudicial functions is of the highest importance * * *" (*Morgan* v. *United States,* 304 U.S. 1, 22 (1938)), review by this Court of the decision below is, we submit, clearly called for.

1. The Decision Below Is Inconsistent With Other Court of Appeals Decisions

The affirmance by the Court below of the Commission's resolution of the hydrocarbon extraction issue against Panhandle on the basis of newly-injected considerations[14] and without according Panhandle an opportunity to present evidence and be heard thereon, plainly deprives Panhandle of the fair and adequate hearing which is an integral facet of due process. *Hill* v. *F.P.C.,* 335 F. 2d 355 (5th Cir., 1964); *American Louisiana Pipe Line Co.* v. *F.P.C.,* 344 F. 2d 525 (D.C. Cir., 1965); *Northeast Airlines, Inc.* v. *C.A.B.,* 345 F. 2d 484 (1st Cir., 1965); *Deep South Broadcasting Co.* v. *F.C.C.,* 347 F. 2d 459 (D.C. Cir. 1965).

In the *Hill* case, for example, which involved an F.P.C. dismissal of a producer rate filing for alleged failure to make out a *prima facie* case, the Fifth Circuit found that the two asserted deficiencies which, in

[14] Any possible doubt that these alleged deficiencies were not raised at any time during which evidence could be presented in these proceedings is dissipated by the Commission's express admission in its brief in the Court below in instant proceeding (at p. 19) that "the need to consider cheap expansibility as a factor in making a cost allocation involving the use of a pipeline's facilities for a non-jurisdictional extraction *had not been recognized by the Commission until after the hearings in this case*" (Emphasis supplied).

the Commission's view, had destroyed the producer's case stemmed from standards which "were not announced until [the entry of] the decision which simultaneously held that the proof was insufficient to make out the 'prima facie' case under them" (335 F. 2d at 358). Accordingly, the Fifth Circuit held that the Commission's reliance upon such newly-injected considerations "* * * deprived producers of a fair and adequate hearing because the standards to be applied were neither evolved nor announced until the decision holding them unsatisfied" (*Id.* at 362).

Since, also, here, Panhandle was unaware until long after the record was closed that the Commission intended to rely on these newly-injected considerations, the affirmance by the Court below of the Commission's reliance on these considerations in resolving the extraction issue against Panhandle without according Panhandle an opportunity to present evidence or be heard with regard thereto, patently is contrary to *Hill* and the other cases cited above.

2. The Decision Below Improperly Deprives Panhandle of Its Right to a Fair Hearing

That the affirmance by the Court below of the Commission's action herein is tainted by gross error, is clear not only from the *Hill* line of cases just discussed, but also from this Court's decision in *Morgan* v. *United States, supra.* In the latter case, Chief Justice Hughes speaking for the Court, expressly noted (304 U.S. at 18-19):

> "* * * The right to a hearing embraces not only the right to present evidence, but also a reasonable opportunity to know the claims of the opposing party and to meet them. The right to submit

> argument implies that opportunity; otherwise the right may be but a barren one. *Those who are brought into contest with the Government in a quasijudicial proceeding aimed at the control of their activities are entitled to be fairly advised of what the Government proposes and to be heard upon its proposals before it issues its final command.*" (Emphasis supplied).

Nor is the denial of due process mitigated in any way by the Commission's holding[15] that "if any allocation of extraction costs and revenues can be justified, it is the pipeline's responsibility to propose a proper segregation * * *" (R. 183). Such a holding flies in the teeth of the Commission's own accepted practice in such matters which had previously been followed in these proceedings. Thus, in situations involving allocation problems, it is commonplace, and indeed, usual practice, for the company to suggest one method; for the Commission's Staff to propose another method; for the Intervenors, if any, to suggest a third; and for the Commission either to adopt one of these methods or, on the basis of the record made, to develop and adopt still another method, which may or may not include elements of those proposed by the parties and/or the Commission's Staff. Inasmuch as a comparable procedure had been followed in the instant proceeding with regard to other issues involving allocation methods (see, e.g., R. 111-3), there had not been any prior indication that the burden of developing an appropriate allocation method with respect to the hydrocarbon extraction issue here involved lay exclusively upon Pan-

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[15] Since the Court below stated no grounds for its decision, we can only assume that it approved the holdings set out in the Commission's opinions in their entirety.

handle and that its failure to propose the precise method which the Commission later evolved and adopted would be penalized by the crediting of all the revenues of the superfluous operations against its pipeline cost of service.

Moreover, such a holding would, if accepted as valid, impose an unwarranted and impossible burden upon regulated companies. It has long been recognized that "allocation of costs is not a matter for the slide rule. It involves judgment on a myriad of facts. It has no claim to an exact science." *Colorado Interstate Gas Co.* v. *F.P.C.*, 324 U.S. 581, 590 (1945). Indeed, the imperfections inherent in most allocation methods led Mr. Justice Brandeis to comment that "it is much easier to reject formulas presented as being misleading than to find one apparently adequate." *Groesbeck* v. *Duluth S.S. & A. Ry. Co.*, 250 U.S. 607, 614-5 (1919). And because of the complexities of the problems usually encountered and the judgment elements involved in developing cost allocations, there typically may be more than one reasonable method. In such circumstances, there patently is no justification for the Commission to condition its willingness to allocate costs between beneficial and superfluous extraction (i.e., between jurisdictional and non-jurisdictional extraction) upon a requirement that the company propose an allocation method which not only is reasonable, but which is acceptable at all times to the Commission, however its membership may change.[16]

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[16] As noted *supra*, p. 5, in Opinion 269, the Commission had itself earlier applied the same method which Panhandle here proposed in allocating costs jointly incurred for natural gas and hydrocarbon extraction. See R. 128-9; 13 F.P.C. at 78-9.

3. The Commission Has No Jurisdiction Over Superfluous Hydrocarbon Extraction

The error of the Commission and the Court below is accentuated by the fact that all the hydrocarbon extraction over and above the very small percentage beneficial to pipeline operations clearly is not subject to Commission regulation under the Natural Gas Act. Although natural gasoline and light hydrocarbons are commingled as vapors with natural gas as it is produced at the wellhead, the Commission has long since recognized that "ethane and the hydrocarbons heavier than ethane" do not constitute "natural gas as defind in the Act" (*Panhandle Eastern Pipe Line Co.*, 12 F.P.C. 686, 706 (1953) and hence the sale of such ethanes and hydrocarbons is not a sale of natural gas within the meaning of the Natural Gas Act. See *Panhandle Eastern Pipe Line Co.*, 25 F.P.C. 787, 798, 854 (1961).

While the extraction of a very small percentage of the total natural gasoline extracted (but none of the lighter hydrocarbons)[17] is desirable to avoid condensation in Panhandle's pipeline system, the overwhelm-percentage of the total hydrocarbon volumes extracted is superfluous thereto. In fact, the uncontradicted evidence shows that such superfluous extraction is undertaken for the wholly separate and distinct business purpose of extracting, refining, processing and selling of hydrocarbons (R. 5-6, 48).

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[17] Of the three products extracted, namely, butane, propane and natural gasoline (R. 22), the record shows that " • • • from the standpoint of the transmission system, the extraction of butane and propane is entirely superfluous as under no circumstances would they condense in the transmission lines, it is only gasoline which is extracted in order to avoid condensation in the transmission lines" (*Ibid.*).

Consequently, the hydrocarbon extraction over and above that which is desirable to improve the efficiency of the pipeline and which is incidental to pipeline operations, is beyond the Commission's jurisdiction to regulate. Cf. *Phillips Petroleum Co.*, 24 F.P.C. 537, 562-5 (1960), *aff'd, sub nom., Wisconsin* v. *F.P.C.*, 303 F. 2d 380 (D.C. Cir., 1961), *aff'd,* 373 U.S. 294 (1963). Settled principles, accordingly, require that the costs allocable to the superfluous extraction be determined separately and the profits from such extraction not used to reduce the company's pipeline cost of service. See, e.g. *Colorado Interstate Gas Co.* v. *F.P.C., supra.*[18]

Also erroneous is the Commission's further ruling that its refusal to segregate the superfluous extraction costs was proper because "there is no basis in the record for assuming that any of the fixed costs of the extraction operations were *not* attributable to facilities necessary or beneficial for the pipeline's jurisdictional operation" (Emphasis in original) and that "there may have been variable extraction costs not assignable to pipeline operations" (R. 165).

Apart from the fact that these assertions are belied by the controlling facts of record, the separability *vel*

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[18] The purported "Commission's 'normal' method" which the Commission undertook to invoke (R. 167, see also, e.g., 160, 163) is inapplicable here inasmuch as it is based on decisions (e.g. *City of Cleveland* v. *Hope Natural Gas Co.*, 3 F.P.C. 150, 178-80 (1940), *rev'd* on other grounds, 134 F. 2d 287, 307-8 (4th Cir., 1943), *rev'd,* 320 U.S. 591 (1944); *Cities Service Gas Co.*, 3 F.P.C. 459, 480-2 (1943), *aff'd* 155 F. 2d 694, 703 (10th Cir., 1946), *cert. denied,* 329 U.S. 773 (1946)) in which it was assumed that *all* of the extraction was necessary, or at least beneficial, to the proper operation of the pipeline system, and no issue was raised or decided with reference to superfluous (i.e. neither necessary nor beneficial) extraction.

non of costs traceable to superfluous extraction is wholly irrelevant to the determination of the appropriate treatment thereof. Each of the Commission's several comments with regard to the lack of separability of such hydrocarbon extraction costs applies with equal force to the classic dual business situation common in the natural gas industry wherein sales are made both for direct consumption and for resale. Both situations are simply illustrations of a common practice wherein the same facilities are used jointly for the conduct of two separate businesses. It is well settled that the Commission is without authority to treat sales for direct consumption in the manner which the Commission has treated the superfluous extraction at Liberal and Sneed. See, e.g. *Colorado Interstate Gas Co., supra* at 593-4.

4. Panhandle Should Not Be Penalized for Commission Delays

Finally, contrary to the Commission (R. 163, 167-8), the fact that these proceedings had already been pending for a long time does not justify the Commission's failure to reopen. Administrative expedition is an unacceptable reason on its face; Panhandle's petition to reopen here denied by the Commission had been pending before the Commission for some sixteen months before the Commission took any action thereon. Moreover, one of the principal reasons for the prolonged delay prior to the filing of the petition to reopen had been the Commission's own failure to develop and apply an appropriate treatment of hydrocarbon extraction costs and revenues in keeping with the circumstances of this case. This failure of the Commission has itself twice (in addition to the instant proceeding) necessitated judicial correction which consumed considerable time.

Similarly, the fact that these proceedings now involve ratemaking for the past rather than the future (R. 163, 169), does not relieve the Commission of its duty to accord Panhandle the fair and adequate hearing which is an integral part of due process. The very magnitude of the amounts involved (aggregating more than $13,000,000) demonstrates the egregious error in the superficial approach and resulting invalid action of both the Commission and the Court below. Consequently, while undoubtedly " 'there must be an end to administrative proceedings' such as this" (R. 167-8), the desirability of such termination plainly does not and cannot override the right, guaranteed to Panhandle as a part of due process, to a fair and adequate hearing.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that this petition for a writ of certiorari should be granted.

Respectfully submitted,

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September 15, 1965

APPENDIX

APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 19016

PANHANDLE EASTERN PIPE LINE CO., *Petitioner*

v.

FEDERAL POWER COMMISSION, *Respondent*

COUNTY OF WAYNE, MICHIGAN
MICHIGAN PUBLIC SERVICE COMMISSION, *Intervenors*

On Petition to Review Orders of the
Federal Power Commission

Decided June 22, 1965

Before BAZELON, *Chief Judge*, and FAHY and WASHINGTON, *Circuit Judges*.

PER CURIAM: The prior history in this court of this case is found in *City of Detroit* v. *Federal Power Comm'n*, 97 U.S. App. D.C. 260, 230 F. 2d 810, *cert. denied*, 352 U.S. 829, and in *Panhandle Eastern Pipe Line Co.* v. *Federal Power Comm'n*, 113 U.S. App. D.C. 94, 305 F. 2d 763, *cert. denied*, 372 U.S. 916. The present petition is for review of orders of the Commission following our remand to the Commission by our judgment in the case last cited. We affirm the present orders as within the Commission's authority validly exercised as a result of the proceedings upon the remand.

Affirmed.

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

September Term, 1964

No. 19,016

PANHANDLE EASTERN PIPE LINE CO., *Petitioner,*

v.

FEDERAL POWER COMMISSION, *Respondent,*

COUNTY OF WAYNE, MICHIGAN and MICHIGAN PUBLIC SERVICE COMMISSION, *Intervenors.*

On Petition to Review Orders of the Federal Power Commission

Before: BAZELON, Chief Judge, and FAHY and WASHINGTON, Circuit Judges.

Judgment

This case came on to be heard on the record from the Federal Power Commission, and was argued by counsel.

ON CONSIDERATION WHEREOF, it is ordered and adjudged by this court that the orders of the Federal Power Commission on review in this case are affirmed.

Per Curiam.

Dated June 22, 1965